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**IN THE  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**No. WD57853**

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**STATE OF MISSOURI, ex rel.  
JEREMIAH W. (JAY) NIXON**

**Relator,**

**v.**

**THE HONORABLE BYRON KINDER,**

**Respondent.**

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**Action in Prohibition of the Circuit Court of Cole County, Missouri  
The Honorable Byron Kinder**

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**RELATOR'S BRIEF**

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## TABLE OF CONTENTS

	Page
STATEMENT OF FACTS.....	6
POINT RELIED ON .....	7
ARGUMENT.....	8
CONCLUSION .....	15
Certificate Of Service .....	16
Certification of Compliance .....	16
APPENDIX .....	A1

## TABLE OF AUTHORITIES

Cases	Page
<i>Baumruk v. Belt</i> , 964 S.W. 2d 443 (Mo. banc 1998).....	7, 10
<i>Ex parte Kent</i> , 490 S.W. 2d 649 (Mo. banc 1973).....	7, 10
<i>Jackson v. Indiana</i> , 406 U.S. 715 (1972).....	7, 9, 10, 12
<i>Kansas v. Hendricks</i> , 521 U.S. 346 (1997).....	8
 <b>Constitutional and Statutory Authority</b>	
Missouri Constitution, Art. V ' 4.....	5
Supreme Court Rule 52.020.....	11
' 477.070, RSMo. 2000 .....	5
' 552.020 .....	8, 9, 12, 14
' 552.020.1 .....	9
' 552.020.11 .....	12
' 552.020.11(6).....	10

' 632.300-632.475 .....	12
' 632.480(5) .....	6, 13
' 632.486 .....	6
' 632.489 .....	8
' 632.489.4 .....	9
' 632.492 .....	6, 8, 9, 11
' 632.495 .....	13
' 632.498 .....	7, 13
" 632.480-513 .....	8



## **JURISDICTIONAL STATEMENT**

Relator seeks a writ of prohibition against a judge of the Circuit Court for Cole County. Cole County is within the geographic jurisdiction of this Court, ' 477.070, RSMo. 2000, and this court has jurisdiction to supervise the circuit courts, Missouri Constitution, Art. V ' 4.

## STATEMENT OF FACTS

The underlying proceeding was initiated by the Attorney General pursuant to ' 632.486. On July 18, 2002, the Attorney General alleged in his petition (Exhibit A to the Petition) that there is probable cause to believe that Jessie Moyers is a sexually violent predator, *i.e.*, that he Asuffers from a mental abnormality which makes [him] more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.@ ' 632.480(5).

On August 23, 2002, the circuit court found probable cause to believe that Moyers is a sexually violent predator. Exhibit B to the Petition. The court ordered a psychological examination, which was completed and filed with the court on October 28, 2002. The circuit court was Ato conduct a trial to determine whether [Moyers] is a sexually violent predator@ within sixty days - *i.e.*, by December 28, 2002. ' 632.492. But the court has not held, nor even scheduled, the statutorily required trial.

Instead of proceeding to trial, Moyers= attorney sought a competency evaluation. Exhibit C to the Petition. The circuit court ordered such an evaluation, and stayed other proceedings. Exhibit D to the Petition; copy attached in Appendix at A1. To date, the respondent has not set a trial date B waiting, apparently, for a report on the results of the evaluation he ordered.

## **POINT RELIED ON**

**The circuit court erred in ordering a competency evaluation and delaying trial of the underlying proceeding because competency to assist at trial is not a prerequisite to a trial under the sexually violent predator statute in that there is no statutory nor constitutional provision precluding the State from trying the question whether a person who is mentally incompetent nonetheless Asuffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.@**

' 632.498, RSMO. 2000

*Jackson v. Indiana*, 406 U.S. 715 (1972)

*Baumruk v. Belt*, 964 S.W. 2d 443 (Mo. banc 1998)

*Ex parte Kent*, 490 S.W. 2d 649 (Mo. banc 1973)



## ARGUMENT

The Attorney General seeks this writ because the respondent is seriously off course. Sections " 632.480-513, RSMo. 2000, set out a specific procedure that he is to follow in determining whether Mr. Moyers is a sexually violent predator. He has departed from that procedure, attempting to engraft criminal procedures that are inapposite here. His rationale for that departure would severely upset existing law, requiring the state to release persons who pose a considerable danger to the public.

The statute sets out the steps for respondent to follow. First, the circuit court holds a hearing and determines whether there is probable cause to believe that Moyers is a sexually violent predator, as statutorily defined. ' 632.489. If the circuit court finds probable cause, it places Moyers in the custody of the Department of Mental Health for a psychological evaluation. *Id.* After the evaluation is complete, the court holds a trial to determine whether Moyers actually is a sexually violent predator. ' 632.492.

Those steps create a civil, not a criminal proceeding. *See Kansas v. Hendricks*, 521 U.S. 346, 369 (1997). Respondent could point to no law B statutory or precedential B permitting a court in a civil proceeding to do what Moyers ultimately wants: to dismiss the Attorney General=s petition, and thus ensure his release, based on a finding that he cannot, merely for lack of competence, be found to be a sexually violent predator.

Thus respondent proceeded as if this case were subject to ' 552.020, RSMo. 2000, which applies only to criminal proceedings. And starting down his erroneous path, the

respondent has delayed trial despite the express mandate in ' 632.492 for prompt disposition.

In a criminal case, the law requires B logically B that whenever there is a question about the capacity of a defendant to assist in his defense, the court order examination of the defendant=s competency. The precise steps Moyers proposed B and the respondent took B are those provided for criminal cases in ' 552.020. That statute precludes a person from being Atried, convicted or sentenced for the commission of an offense so long as@ the person Aas a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his defense.@ ' 552.020.1. But it is expressly limited to criminal cases, *i.e.*, to cases in which a person is being Atried . . . for the commission of an offense.@ This is not such a case. Moyers is not to be tried Afor the commission of an offense,@ but to determine whether he should be committed for treatment as a sexually violent predator.

There is no civil parallel to ' 552.020. The sexually violent predator statute specifically requires a mental examination. ' 632.489.4. But it does not contemplate that a person could claim to be incompetent to stand trial, and thus be exempt from civil commitment. And ironically, to accept such a claim would eliminate the procedure the courts have outlined to follow a determination of incompetency under ' 552.020.

In *Jackson v. Indiana*, 406 U.S. 715 (1972), the U.S. Supreme Court considered the state=s ability to retain in custody a person who is incompetent to stand trial B and left civil commitment as an option, despite the person=s incompetence. Speaking of Aa person charged by a State with a criminal offense who is committed solely on account of his incapacity to

proceed to trial,@ the Court required, first, a determination whether Athere is a substantial probability that he will attain that capacity in the foreseeable future.@ *Id.* at 738. If there is not such a Asubstantial probability,@ the state has two choices: Aeither institute the customary civil commitment proceeding that would be required to commit any other citizen, or release the defendant.@ *Id.* See also *id.* at 738 n. 25. The Court thus expressly allowed a state to immediately pursue the civil commitment of one who is, as Moyers claims to be, not competent to stand trial. The Missouri Supreme Court followed *Jackson*, thus endorsing that same rule. *Baumruk v. Belt*, 964 S.W. 2d 443, 444 (Mo. banc 1998); *Ex parte Kent*, 490 S.W. 2d 649, 651 (Mo. banc 1973). And it has been adopted in Missouri in the very statute that respondent erroneously follows ' 552.020.11(6).

The rationale asserted by Moyers and respondent would upset that scheme. It would preclude civil commitment trials of those not competent to assist their attorneys B what *Jackson*, *Baumruk*, and *Kent* expressly allow. It would leave the state with only one of the two options identified by the U.S. Supreme Court in *Jackson*: to release the incompetent, no matter how dangerous he may be.

In the sexually violent predator context, at least, the civil commitment option available under *Jackson* comes with significant protections for the person the state proposes to commit. Moyers has a right to the assistance of counsel B without expense, if the person

is indigent. ' 632.492. And he can invoke Supreme Court Rule 52.02 B but he has chosen not to.

Rule 52.02 speaks specifically to the situation B alleged by Moyers' counsel here B where a person not having a duly appointed guardian is incapable by reason of mental disease . . . of properly caring for the person's own interests in any litigation brought by or against such person.@ The trial court is to inquire into the person's mental . . . condition,@ and if the court finds it to be proper for the protection of the person, the court may appoint a next friend or guardian ad litem for said person for the purpose of the particular litigation.@ Rule 52.02 later states that such appointments are not always required in civil cases even in the case of incompetence: A failure to appoint a next friend or guardian ad litem for . . . a mentally . . . infirm person shall not invalidate the proceedings if the court finds that the interests of . . . the mentally . . . infirm person were adequately protected.@ Rule 52.02(m). If the circuit court here is concerned that Moyers is not competent to make the necessary decisions in his own defense, the court should consider whether to appoint a friend or guardian to assist.

Moyers' counsel did not seek relief under Rule 52.02. Indeed, in responding to the writ petition, his counsel explains why he feels compelled to decline that option. As noted above, Rule 52.02(k) provides for the appointment of a guardian ad litem. But according to the answer filed for respondent by Moyers' counsel, the suggestion that Mr. Moyers may be adequately served by a guardian ad litem is unavailing.@ Respondent's Answer to Relator's Petition in prohibition and Mandamus at 7. Respondent points out that such an appointment might even be counterproductive, from Moyers' standpoint: an appointed guardian A may

conclude that Mr. Moyers= mental infirmity makes him a danger to himself or others sufficient to warrant involuntary commitment under Sections 632.300-632.475,@ *id.*, and if so, the guardian A would come between Mr. Moyers and appointed counsel,@ *id.* at 8. Respondent specifically disclaims even the possibility that a guardian appointed pursuant to Rule 52.02 would help in connection with the trial. Should a guardian reach the conclusion that it is in the best interests of Moyers to be treated in a secure facility, the guardian=s efforts to pursue that course A would create an ethical dilemma for counsel regarding what course and upon whose direction he or she should proceed.@ *Id.* And even if the guardian concluded that Moyers was not subject to the sexually violent predator statute, the guardian A could not >assist= counsel in preparation of a defense.@ *Id.*

Having rejected the possibility of seeking assistance under Rule 52.02, and being unable to apply ' 552.020 to a civil case, respondent is without any authority in statute or rule for the course he has chosen. He is left with vague references to constitutional provisions, most of them ones that relate solely to criminal cases. But he cannot reconcile his reading of those provisions with *Jackson v. Indiana*. Indeed, if the court were to endorse his position, it would necessarily eliminate the civil commitment option from the *Jackson* rule and from ' 552.020.11 B again, thus promising freedom to anyone lucky enough to establish incompetency to stand trial, regardless of the threat they pose to the public.

In a veiled but vain attempt to strengthen his position, respondent describes in carefully colored terms the sexually violent predator law. He correctly states the purpose of that law, A to protect society while treatment is provided for the purpose of eliminating the mental

abnormality that makes the person dangerous.@ *Id.* at 8. He then ignores the very limited scope of the law. It applies *only* to one who is adjudged, beyond a reasonable doubt, to suffer[] from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.@

' 632.480(5). It is not simply indefinite punishment for past behavior.@ Answer at 8. A sexually violent predator is committed to the custody of the director of the department of mental health for control, care and treatment,@ but only until such time as the person's mental abnormality has so changed that the person is safe to be at large.@ ' 632.495. He is statutorily ensured an annual review, to determine if his condition has changed.' 632.498. Thus when he reaches the point at which he is safe to be at large,@ he is no longer subject to the law and its requirement that he be treated in a secure facility. To suggest, as respondent does, that Moyers may be placed in the custody of the Department of Mental Health for the rest of his life with no possible chance of release,@ Answer at 9, is to implicitly concede that due to his illness, Moyers will always be more likely than not to commit sexually violent acts. Missing from the Answer is any explanation as to why someone who falls into that category is constitutionally entitled to avoid custodial treatment, merely because they are so ill that they cannot help their attorneys.

In a further attempt to strengthen his position, respondent claims that it is fully within [his] authority to determine whether Mr. Moyers has the ability to incorporate the offered treatment toward resolution of his mental abnormality.@ *Id.* at 8. But he ignores the very nature of his own order. *See* App. at A1. It tracks the typical ' 552.020 order B a logical

course, given that the request for the order said nothing about future treatment. *See* Exhibit C to the Petition. The order says nothing about Moyers= ability to be treated. It is obviously aimed not at what respondent suggests in his post hoc rationalization, but at obtaining an examination that could lead only to a determination whether Moyers is so ill that he cannot help his attorney, and then, presumably, to the impossible conclusion that one so ill that he cannot help his attorney must always be released into the community.

## CONCLUSION

For the reasons stated above, this court should order respondent to proceed to adjudicate whether Jessie F. Moyers is a sexually violent predator.

Respectfully submitted,

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### **Certificate Of Service**

The undersigned hereby certifies that a copy of the foregoing brief was mailed, postage prepaid, via United States mail, on this 10<sup>th</sup> day of March, 2003, to:

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Kansas City, MO 64106-2417

Honorable Byron Kinder  
Circuit Judge, 19<sup>th</sup> Judicial Circuit  
Cole County Courthouse  
301 E. High Street  
Jefferson City, MO 65101

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Assistant Attorney General

### **Certification of Compliance**

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule 84.06, and that the brief contains 2,247 words.

The undersigned further certifies that the disk simultaneously filed with the hard copies of the brief has been scanned for viruses and is virus-free.

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Assistant Attorney General

## **APPENDIX**

Order for Competency Evaluation and Order for Stay in Proceedings . . . . .	A1
552.020 .....	A4
632.480 .....	A9
632.492 .....	A10
632.495 .....	A10
RULE 52.02 .....	A11

552.020. 1. No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

2. Whenever any judge has reasonable cause to believe that the accused lacks mental fitness to proceed, he shall, upon his own motion or upon motion filed by the state or by or on behalf of the accused, by order of record, appoint one or more private psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, who are neither employees nor contractors of the department of mental health for purposes of performing the examination in question, to examine the accused; or shall direct the director to have the accused so examined by one or more psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals. The order shall direct that a written report or reports of such examination be filed with the clerk of the court. No private physician, psychiatrist, or psychologist shall be appointed by the court unless he has consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that, if the order directs the director of the department to have the accused examined, the director, or his designee, shall determine the time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses and may require the provision of police reports to the department for use in evaluations. The department shall establish standards and provide training for those individuals performing examinations pursuant to this section and section 552.030. No individual who is employed by or contracts with the department shall be designated to perform an examination pursuant to this chapter unless the individual meets the qualifications so established by the department. Any examination performed pursuant to this subsection shall be completed and filed with the court within sixty days of the order unless the court for good cause orders otherwise. Nothing in this section or section 552.030 shall be construed to permit psychologists to engage in any activity not authorized by chapter 337, RSMo. One pretrial evaluation shall be provided at no charge to the defendant by the department. All costs of subsequent evaluations shall be assessed to the party requesting the evaluation.

3. A report of the examination made under this section shall include:

- (1) Detailed findings;
- (2) An opinion as to whether the accused has a mental disease or defect;
- (3) An opinion based upon a reasonable degree of medical or psychological certainty as to whether the accused, as a result of a mental disease or defect, lacks capacity to

understand the proceedings against him or to assist in his own defense;

(4) A recommendation as to whether the accused should be held in custody in a suitable hospital facility for treatment pending determination, by the court, of mental fitness to proceed; and

(5) A recommendation as to whether the accused, if found by the court to be mentally fit to proceed, should be detained in such hospital facility pending further proceedings.

4. If the accused has pleaded lack of responsibility due to mental disease or defect or has given the written notice provided in subsection 2 of section 552.030, the court shall order the report of the examination conducted pursuant to this section to include, in addition to the information required in subsection 3 of this section, an opinion as to whether at the time of the alleged criminal conduct the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality, or wrongfulness of his conduct or as a result of mental disease or defect was incapable of conforming his conduct to the requirements of law. A plea of not guilty by reason of mental disease or defect shall not be accepted by the court in the absence of any such pretrial evaluation which supports such a defense. In addition, if the accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is not a dangerous felony as defined in section 556.061, RSMo, or those crimes set forth in subsection 11 of section 552.040, or the attempts thereof, the court shall order the report of the examination to include an opinion as to whether or not the accused should be immediately conditionally released by the court pursuant to the provisions of section 552.040 or should be committed to a mental health or mental retardation facility. If such an evaluation is conducted at the direction of the director of the department of mental health, the court shall also order the report of the examination to include an opinion as to the conditions of release which are consistent with the needs of the accused and the interest of public safety, including, but not limited to, the following factors:

(1) Location and degree of necessary supervision of housing;

(2) Location of and responsibilities for appropriate psychiatric, rehabilitation and aftercare services, including the frequency of such services;

(3) Medication follow-up, including necessary testing to monitor medication compliance;

(4) At least monthly contact with the department's forensic case monitor;

(5) Any other conditions or supervision as may be warranted by the circumstances of the case.

5. If the report contains the recommendation that the accused should be committed to or held in a suitable hospital facility pending determination of the issue of mental fitness to proceed, and if the accused is not admitted to bail or released on other conditions, the court may order that the accused be committed to or held in a suitable hospital facility pending determination of the issue of mental fitness to proceed.

6. The clerk of the court shall deliver copies of the report to the prosecuting or circuit attorney and to the accused or his counsel. The report shall not be a public record or open to the public. Within ten days after the filing of the report, both the defendant and the state shall, upon written request, be entitled to an order granting them an examination of the accused by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, of their own choosing and at their own expense. An examination performed pursuant to this subsection shall be completed and a report filed with the court within sixty days of the date it is received by the department or private psychiatrist, psychologist or physician unless the court, for good cause, orders otherwise. A copy shall be furnished the opposing party.

7. If neither the state nor the accused nor his counsel requests a second examination relative to fitness to proceed or contests the findings of the report referred to in subsections 2 and 3 of this section, the court may make a determination and finding on the basis of the report filed or may hold a hearing on its own motion. If any such opinion is contested, the court shall hold a hearing on the issue. The court shall determine the issue of mental fitness to proceed and may impanel a jury of six persons to assist in making the determination. The report or reports may be received in evidence at any hearing on the issue but the party contesting any opinion therein shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue.

8. At a hearing on the issue pursuant to subsection 7 of this section, the accused is presumed to have the mental fitness to proceed. The burden of proving that the accused does not have the mental fitness to proceed is by a preponderance of the evidence and the burden of going forward with the evidence is on the party raising the issue. The burden of going forward shall be on the state if the court raises the issue.

9. If the court determines that the accused lacks mental fitness to proceed, the criminal proceedings shall be suspended and the court shall commit him to the director of the department of mental health.

10. Any person committed pursuant to subsection 9 of this section shall be entitled to the writ of habeas corpus upon proper petition to the court that committed him. The issue of the mental fitness to proceed after commitment under subsection 9 of this section may also be raised by a motion filed by the director of the department of mental health or by the state, alleging the

mental fitness of the accused to proceed. A report relating to the issue of the accused's mental fitness to proceed may be attached thereto. If the motion is not contested by the accused or his counsel or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he is ordered discharged from the director's custody upon a habeas corpus hearing, the criminal proceedings shall be resumed.

11. The following provisions shall apply after a commitment as provided in this section:

(1) Six months after such commitment, the court which ordered the accused committed shall order an examination by the head of the facility in which the accused is committed, or a qualified designee, to ascertain whether the accused is mentally fit to proceed and if not, whether there is a substantial probability that the accused will attain the mental fitness to proceed to trial in the foreseeable future. The order shall direct that written report or reports of the examination be filed with the clerk of the court within thirty days and the clerk shall deliver copies to the prosecuting attorney or circuit attorney and to the accused or his counsel. The report required by this subsection shall conform to the requirements under subsection 3 of this section with the additional requirement that it include an opinion, if the accused lacks mental fitness to proceed, as to whether there is a substantial probability that the accused will attain the mental fitness to proceed in the foreseeable future;

(2) Within ten days after the filing of the report, both the accused and the state shall, upon written request, be entitled to an order granting them an examination of the accused by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, of their own choosing and at their own expense. An examination performed pursuant to this subdivision shall be completed and filed with the court within thirty days unless the court, for good cause, orders otherwise. A copy shall be furnished to the opposing party;

(3) If neither the state nor the accused nor his counsel requests a second examination relative to fitness to proceed or contests the findings of the report referred to in subdivision (1) of this subsection, the court may make a determination and finding on the basis of the report filed, or may hold a hearing on its own motion. If any such opinion is contested, the court shall hold a hearing on the issue. The report or reports may be received in evidence at any hearing on the issue but the party contesting any opinion therein relative to fitness to proceed shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue;

(4) If the accused is found mentally fit to proceed, the criminal proceedings shall be resumed;

(5) If it is found that the accused lacks mental fitness to proceed but there is a substantial

probability the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall continue such commitment for a period not longer than six months, after which the court shall reinstitute the proceedings required under subdivision (1) of this subsection;

(6) If it is found that the accused lacks mental fitness to proceed and there is no substantial probability that the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall dismiss the charges without prejudice and the accused shall be discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475, RSMo, in which case those sections and no others will be applicable. The probate division of the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper pleading to determine if the accused shall be involuntarily detained under chapter 632, RSMo, or to determine if the accused shall be declared incapacitated under chapter 475, RSMo, and approved for admission by the guardian under section 632.120 or 633.120, RSMo, to a mental health or retardation facility. When such proceedings are filed, the criminal charges shall be dismissed without prejudice if the court finds that the accused is mentally ill and should be committed or that he is incapacitated and should have a guardian appointed. The period of limitation on prosecuting any criminal offense shall be tolled during the period that the accused lacks mental fitness to proceed.

12. If the question of the accused's mental fitness to proceed was raised after a jury was impaneled to try the issues raised by a plea of not guilty and the court determines that the accused lacks the mental fitness to proceed or orders the accused committed for an examination pursuant to this section, the court may declare a mistrial. Declaration of a mistrial under these circumstances, or dismissal of the charges pursuant to subsection 11 of this section, does not constitute jeopardy, nor does it prohibit the trial, sentencing or execution of the accused for the same offense after he has been found restored to competency.

13. The result of any examinations made pursuant to this section shall not be a public record or open to the public.

14. No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal. A finding by the court that the accused is mentally fit to proceed shall in no way prejudice the accused in a defense to the crime charged on the ground that at the time thereof he was afflicted with a mental disease or defect excluding responsibility, nor shall such finding by the court be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

632.480. As used in sections 632.480 to 632.513, the following terms mean:

(1) "Agency with jurisdiction", the department of corrections or the department of mental health;

(2) "Mental abnormality", a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others;

(3) "Predatory", acts directed towards individuals, including family members, for the primary purpose of victimization;

(4) "Sexually violent offense", the felonies of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes, or child molestation in the first or second degree, sexual abuse, sexual assault, deviate sexual assault, or the act of abuse of a child as defined in subdivision (1) of subsection 1 of section 568.060, RSMo, which involves sexual contact, and as defined in subdivision (2) of subsection 1 of section 568.060, RSMo;

(5) "Sexually violent predator", any person who suffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility and who:

(a) Has pled guilty or been found guilty, or been found not guilty by reason of mental disease or defect pursuant to section 552.030, RSMo, of a sexually violent offense; or

(b) Has been committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

632.492. Within sixty days after the completion of any examination held pursuant to section 632.489, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings pursuant to sections 632.480 to 632.513, any person subject to sections 632.480 to 632.513 shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. If the trial is held before a jury, the judge shall instruct the jury that if it finds that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment. If no demand for a jury is made, the trial shall be before the court. The court



shall conduct all trials pursuant to this section in open court, except as otherwise provided for by the child victim witness protection law pursuant to sections 491.675 to 491.705, RSMo.

632.495. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Any determination as to whether a person is a sexually violent predator may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. Such control, care and treatment shall be provided by the department of mental health. At all times, persons committed for control, care and treatment by the department of mental health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the director of the department of mental health and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. The department of mental health shall not place or house an offender determined to be a sexually violent predator, pursuant to sections 632.480 to 632.513, with other mental health patients who have not been determined to be sexually violent predators. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the department of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in section 632.492.

#### **RULE 52.02 CIVIL ACTIONS BY AND AGAINST MINORS AND MENTALLY OR PHYSICALLY INFIRM**

(a) Civil Actions by Minors, Prosecuted by Whom. Civil actions by minors may be commenced and prosecuted only by a duly appointed guardian of such minor or, if there is no such guardian, by a next friend appointed in such civil action; if asserted by counterclaim, cross-claim or third party pleadings, such civil action may only be prosecuted by a duly appointed guardian of such minor or, if there is no such guardian, by a guardian ad litem appointed for such civil action.

(b) Next Friend, by Whom Appointed. The appointment of a next friend for a minor shall be made by the judge of the court in which the civil action is intended to be brought, or by the clerk thereof.

(c) How Appointed. Such appointment shall be made on the petition in writing of such minor if of the age of fourteen years and the written consent of the person proposed to be next friend. If such minor be under the age of fourteen years, the appointment of a next friend may be made upon the written application of a relative or friend of the minor, in which case a notice thereof must be given to the person with whom such minor resides.

(d) Petition and Appointment to Be Filed Before Further Proceedings. The petition for the appointment of a next friend, the written consent of the person proposed to be next friend, and the order of appointment, shall be filed in the office of the clerk of the court where the civil action is proposed to be brought before any proceedings shall be had in the cause.

(e) Civil Actions Against Minors Not to Proceed Without Guardian. After the commencement of a civil action against a minor defendant, and the service of process upon him, the civil action shall not be prosecuted any further until a guardian or guardian ad litem for such minor defendant be appointed, except for such discovery proceedings as may be necessary to determine whether a defendant is a minor or has a duly appointed guardian.

(f) Appointment of Guardian Ad Litem. The appointment of a guardian ad litem shall be made by the court in which the civil action is pending upon the written request of the minor defendant, if of the age of fourteen years or more, or, if such minor be under said age, on the written request of a relative or friend of the minor, and on the written consent of any competent person proposed as guardian ad litem. Such request shall be filed in the office of the clerk of the court before any answer by such minor shall be filed.

(g) Guardian Ad Litem, When Appointed. If such minor defendant neglect, for one day after the expiration of the time within which the minor defendant is summoned to appear to the suit to procure the appointment of a guardian ad litem to defend the civil action, the court shall appoint some competent person to be guardian ad litem for such minor in the defense of such civil action.

(h) Next Friend or Guardian Ad Litem to Give Bond.

1. Before a next friend or guardian ad litem can receive a receipt for any money or property, personal or real, and before the next friend or guardian ad litem can acknowledge satisfaction or discharge of any judgment, the next friend or guardian ad litem must execute a bond to such minor; except that no bond shall be required if: (i) the total value of the property or money, exclusive of expenses and fees approved by the

court, is not in excess of ten thousand dollars and all of the money or property is to be turned over to the minor or the minor's parent or (ii) a sufficiently bonded guardian files a receipt approved by the court for such money or property. The bond must be approved by the court and shall be conditioned that the next friend or guardian ad litem shall account to such minor for all money or property of such minor that has or does come into the next friend or guardian ad litem's hands, less only those expenses and attorney fees the payment of which has been approved by order of the court. The bond shall be in an amount equal to the value of said money or property if the surety is a corporate bonding, surety or insurance company and in an amount double the value of said money or property if the surety is not a corporate bonding, surety or insurance company, in which event there shall be two sureties. In either event, the surety or sureties shall be approved by the court before the bond can be approved.

2. Failure to execute such approved bond with approved surety or sureties when required under the provisions of subsection 1 shall, upon receipt by a next friend or guardian ad litem of any money or property for or on behalf of such minor, immediately render such next friend or guardian ad litem personally liable to such minor for a penal sum in an amount double the value of such money or property and also shall render absolutely void and of no effect any release, receipt or acknowledgment of satisfaction or discharge of any judgment which has or is in the future made or executed by the next friend or guardian ad litem.

3. The duties of the next friend or guardian ad litem and the obligations under such bond shall continue until discharged by order of the court.

(i) Guardian and Next Friend Liable for Costs. The guardian or next friend of any minor who commences or prosecutes a civil action shall be responsible for the costs thereof, unless such minor be permitted by the court to sue as a poor person, as provided by law.

(j) Guardian Ad Litem Liable for Costs in Case of Misconduct. No person appointed guardian ad litem for a minor, for the purpose of defending a civil action against such minor, shall be personally liable for the costs of such civil action, unless specially charged by the order of the court for some personal misconduct in said cause.